

AMENDED IN ASSEMBLY MAY 1, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 898

Introduced by Assembly Member Leach

February 23, 2001

An act to amend Section 17942 of, and to repeal and add Section 17943 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 898, as amended, Leach. Income taxes: LLCs: fee adjustment.

The Personal Income Tax Law provides that a limited liability company doing business in this state shall pay annually a specified tax for the privilege of doing business in this state. In addition, that law requires that any limited liability company subject to that tax shall pay a fee, based upon total income from all sources reportable to this state, which is subject to adjustment pursuant to a study and determination by the Franchise Tax Board.

This bill would increase these fees, as specified, and would delete those provisions relating to the adjustment of that fee, as provided.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17942 of the Revenue and Taxation
- 2 Code is amended to read:

1 17942. (a) In addition to the tax imposed under Section
2 17941, every limited liability company subject to tax under
3 Section 17941 shall pay annually to this state a fee equal to:

4 (1) Nine hundred dollars (\$900), if the total income from all
5 sources reportable to this state for the taxable year is two hundred
6 fifty thousand dollars (\$250,000) or more, but less than five
7 hundred thousand dollars (\$500,000).

8 (2) Two thousand five hundred dollars (\$2,500), if the total
9 income from all sources reportable to this state for the taxable year
10 is five hundred thousand dollars (\$500,000) or more, but less than
11 one million dollars (\$1,000,000).

12 (3) Six thousand dollars (\$6,000), if the total income from all
13 sources reportable to this state for the taxable year is one million
14 dollars (\$1,000,000) or more, but less than five million dollars
15 (\$5,000,000).

16 ~~(4) Nine thousand dollars (\$9,000)~~ *Eleven thousand seven*
17 *hundred ninety dollars (\$11,790)*, if the total income from all
18 sources reportable to this state for the taxable year is five million
19 dollars (\$5,000,000) or more.

20 (5) (A) This subdivision shall apply to taxable years beginning
21 on or after January 1, 1997.

22 (6) The changes made to this subdivision by the act adding this
23 paragraph shall apply to taxable years beginning on or after
24 January 1, 2001.

25 (b) (1) For purposes of this section, “total income” means
26 gross income, as defined in Section 24271, plus the cost of goods
27 sold that are paid or incurred in connection with the trade or
28 business of the taxpayer. However, “total income” shall not
29 include allocation or attribution of income or gain or distributions
30 made to a limited liability company in its capacity as a member of,
31 or holder of an economic interest in, another limited liability
32 company if the allocation or attribution of income or gain or
33 distributions are directly or indirectly attributable to income that
34 is subject to the payment of the fee described in this section.

35 (2) In the event a taxpayer is a commonly controlled limited
36 liability company, the total income from all sources reportable to
37 this state, taking into account any election under Section 25110,
38 may be determined by the Franchise Tax Board to be the total
39 income of all the commonly controlled limited liability company
40 members if it determines that multiple limited liability companies

1 were formed for the primary purpose of reducing fees payable
2 under this section. A determination by the Franchise Tax Board
3 under this subdivision may only be made with respect to one
4 limited liability company in a commonly controlled group.
5 However, each commonly controlled limited liability company
6 shall be jointly and severally liable for the fee. For purposes of this
7 section, commonly controlled limited liability companies shall
8 include the taxpayer and any other partnership or limited liability
9 company doing business (as defined in Section 23101) in this state
10 and required to file a return under Section 18633 or 18633.5, in
11 which the same persons own, directly or indirectly, more than 50
12 percent of the capital interests or profits interests.

13 (c) The fee assessed under this section shall be due and payable
14 on the date the return of the limited liability company is required
15 to be filed under Section 18633.5, shall be collected and refunded
16 in the same manner as the taxes imposed by this part, and shall be
17 subject to interest and applicable penalties.

18 SEC. 2. Section 17943 of the Revenue and Taxation Code is
19 repealed.

20 SEC. 3. Section 17943 is added to the Revenue and Taxation
21 Code, to read:

22 17943. It is the intent of the Legislature that the amount of the
23 annual fee described in Section 17942 shall apply to the taxable
24 year beginning January 1, 2001, and subsequent taxable years,
25 notwithstanding the results of any study prepared by the Franchise
26 Tax Board and submitted to the Joint Legislative Budget
27 Committee pursuant to former Section 17943.

28 SEC. 4. This act provides for a tax levy within the meaning of
29 Article IV of the Constitution and shall go into immediate effect.

